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U.S. DISTRICT COURT  
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DISTRICT OF UTAH  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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TURNER GAS COMPANY, a Nevada  
corporation,

Plaintiff and  
Counterclaim Defendant,

vs.

MARK A. HARRIS, an individual,  
SERVICES GROUP, INC., KAMPS  
COMPANY, KAMPS PROPANE, INC.,  
ECONOMY TRANSPORT, INC.,  
WHOLESALE SERVICES, INC.; and  
KIVA ENERGY, INC., corporations.

Defendants

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**MEMORANDUM DECISION  
AND ORDER RE:  
MOTION TO REMAND TO  
STATE COURT**

Case No. 2:05-CV-00441 TC

Judge Tena Campbell  
Magistrate Judge Brooke C. Wells

This action was originally commenced in the Third Judicial District Court in and for Salt Lake County, State of Utah, and captioned *Turner Gas Company v. Mark A. Harris, et al*, Civil No. 050905087. Thereafter, it was removed to the United States District Court for the Central Division of Utah by Plaintiff. Defendants Mark A. Harris, Services Group, Inc., Kamps Company, Kamps Propane, Inc., Economy Transport, Inc., Wholesale Services, Inc., and Kiva Energy, Inc. (collectively “Kamps Defendants”) moved to have this case remanded to the Third Judicial District Court in and for Salt Lake County, State of Utah, based upon a lack of subject matter jurisdiction. Kamps Defendants’ *Motion to Remand* came on for a regularly scheduled hearing and argument before this Court on June 4, 2008. Kamps Defendants were represented by counsel of record, Jesse C. Trentadue, of Suitter Axland, PLLC. Plaintiff Turner Gas Company was represented by its counsel of record, Matthew C. Barneck, of Richards, Brandt, Miller & Nelson.

Although the Court recognizes Plaintiff’s frustration that Kamps Defendants’ *Motion to Remand* comes at this late date, subject matter jurisdiction cannot be waived. More importantly, Plaintiff concedes that its original State Court *Complaint* did not invoke federal jurisdiction. The Court concurs with Plaintiff’s concession and finds, after

a review of the original *Complaint*, that it did not set forth any basis for federal jurisdiction. It was, in other words, not removable to federal court.

Nevertheless, Plaintiff contends that the basis for its removal was the federal claim asserted by the Kamps Defendants in their *Counter Claim*. But this basis for removal was improper because Plaintiff cannot assert federal question jurisdiction to support removal based on allegations in the *Counter Claim*, even when the *Counter Claim* alleges a federal cause of action. Further, Plaintiff cannot cure the lack of federal subject matter jurisdiction by subsequently amending its *Complaint* to assert a federal cause of action.

The foregoing principles of law governing subject matter jurisdiction and removal of a state court action to federal court are narrowly construed. This is necessarily so because at the core of the federal judicial system is the principle that federal courts are courts of limited jurisdiction. It being undisputed that there was no federal jurisdiction to sustain the removal of Plaintiff's *Complaint* to federal court, this Court lacked subject matter jurisdiction over this action from the outset and has no option other than to remand. Consequently, Kamps Defendants' *Motion to Remand* is **GRANTED**.

**IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED** that this matter be, and it is hereby remanded to the Third Judicial District Court in and for Salt Lake County, State of Utah, for further proceedings;

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to 28 *U.S.C.* §1447(c), the Clerk of the United States District Court for the District of Utah shall immediately mail a certified copy of this *Order* of remand to the Clerk of the Third Judicial District Court in and for Salt Lake County, State of Utah.

DATED this 13 day of June, 2008.

  
Judge Tena Campbell  
United States District Judge